

FALCONBRIDGE, C.J.K.B., in a written judgment, said that the plaintiffs, carrying on business in Calgary, Alberta, asserted that they had bought from the defendants, through Nicholson & Bain, agents for the defendants, a car-load of apples, which the defendant refused to ship in accordance with the contract.

The contract was said to be evidenced by: (1) a telegram of the 14th October, 1914, from N. & B. to the defendants saying that N. & B. had sold the plaintiffs a car choice winter pack at 5 cents for fifties, $5\frac{1}{4}$ for twenty-fives, including commission—shipment opening navigation; (2) telegram from the defendants to N. & B. of the 16th October, "Accept price;" (3) sold note sent by N. & B. to the defendants on receipt of telegram, 16th October; (4) bought note sent on the same day by N. & B. to the plaintiffs; (5) letter of the 20th October written by the defendants to N. & B. on receipt of the sold note, objecting to terms mentioned in sold note.

If the terms of the contract had not sufficiently appeared by the telegrams and bought note, the letter of the 20th October would supply a sufficient memorandum to satisfy the Statute of Frauds, notwithstanding that it contained a repudiation of the contract by the defendants—the question is not one of the intention of the person signing the document, but merely of evidence against him: *Bailey v. Sweeting* (1861), 9 C.B.N.S. 843, and other cases cited in *Benjamin on Sale*, 5th ed., pp. 266, 267.

The omission of the particular mode or time of payment does not necessarily invalidate a contract of sale: *Valpy v. Gibson* (1847), 4 C.B. 837.

Correspondence between the defendants and N. & B. continued up to the end of 1914, the defendants always insisting on payment for the car when packed, but eventually offering to take payment as of the 1st January, 1915. The plaintiffs always insisted upon their contract.

The contention of the defendants that "shipment opening navigation" could mean anything but the opening of navigation in 1915 was absurd—if they failed to grasp the obvious meaning of the first telegram, their misapprehension could not affect the validity of the contract.

In the bought and sold notes, the only reference to payment was in the two words used—"Terms usual." The effort to shew a custom of trade by which these words meant payment at the time of the sale or payment before shipment, failed.

As to damages, the measure was not the price which the plaintiffs had to pay at the time for shipment of the apples—say from the middle of April to the middle of May, 1917. When the plain-